



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking to Promote Policy)
And Program Coordination and Integration in) Rulemaking 04-04-003
Electric Utility Resource Planning.) (Filed April 1, 2004)
)

**COMMENTS OF SEMPRA GLOBAL ON PROPOSED OPINION
ON PETITIONS FOR MODIFICATION OF DECISION 05-10-042**

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COMMENTS OF SEMPRA GLOBAL ON PROPOSED OPINION ON PETITIONS FOR MODIFICATION OF DECISION 05-10-042

Sempra Global files these comments on the Proposed Decision of Administrative Law Judge Mark Wetzell that would modify certain of the rules governing the resource-adequacy requirements previously adopted by the Commission. Sempra Global is the parent of Sempra Energy Solutions, a duly registered energy service provider operating in the State of California. Sempra Energy Solutions would be adversely affected by certain of the proposed modifications and urges the Commission to reject them or otherwise consider their implications more fully prior to their adoption.

I. The Use of Imports as Resource-Adequacy Capacity

As the Commission is aware, load-serving entities have already filed their year-ahead resource-adequacy demonstrations for the 2007 summer period, including for the first time their showings related to local resource-adequacy requirements. Those demonstrations were developed under the well-vetted rules previously adopted by the Commission. Load-serving entities, including Sempra Energy Solutions, have entered into numerous commercial transactions with suppliers pursuant to those rules. Sempra Global submits that modifications to the resource-adequacy program rules should only be done with due deliberation and with considerable care so as to not impair the value of the

contracts load-serving entities have executed previously under the assumption that those contracts could be used to meet the State’s resource-adequacy requirements. With respect to the modifications being proposed for the use of imports as resource-adequacy capacity, Sempra Global submits that insufficient deliberation is being required of this change and that the proposed change will unduly harm its interests.

The Commission previously held that firm energy contracts bearing liquidated damages provisions (“Firm LD contracts”) could be used to meet a load-serving entity’s resource-adequacy requirements, subject to certain portfolio limitations. Specifically, for the 2007 year, no more than fifty percent (50%) of a load-serving entity’s resource-adequacy obligations may be met using firm LD contracts. But the Commission also previously exempted Firm LD contracts backed by imports from this portfolio limitation, up to the California Independent System Operator’s (“CAISO”) allocation of inter-tie capacity to individual load-serving entities, as they are backed by spinning reserves and therefore did not pose issues of “double-counting.” (*See*, D.05-10-042, at p. 68). The Proposed Decision now reverses the Commission’s previous holdings on the CAISO’s mere assertion that import contracts *could* be sourced from resources internal to the CAISO control area, and should be required to specify a point of delivery at an inter-tie, to assure that this is not the case. Sempra Global objects to this reversal of policy and new requirement on several grounds.

First and foremost, there is absolutely no evidence to suggest that the Commission was incorrect in its prior holding that import contracts did not pose a threat of double-counting. Sempra Global agrees with the Division of Ratepayer Advocates that the

modification has not been demonstrated to be necessary.¹ While the CAISO suggests that the energy obligations under an import contract could be met through the use of resources internal to the CAISO control area, the CAISO does not provide any indication that this is in fact occurring, or is occurring at a level that threatens the system reliability the resource-adequacy program is intended to provide. Moreover, as the owners of internal resources execute unit-specific resource-adequacy contracts (a result that should increase with the implementation of local resource-adequacy requirements) and assume availability obligations under those contracts, the potential for double-counting of and reliance on internal units to support import contracts declines. The Commission should insist on more than mere assertions before modifying the resource-adequacy rules and, in any event, should allow the affected parties to test the veracity of those assertions. Here, no process has been conducted to determine the legitimacy or the extent of the threat to system reliability the CAISO asserts.

Second, even if the Commission is willing to presume that the CAISO's belief that internal resources are being used to support import contracts at a level that threatens the purpose of the resource-adequacy program is correct, the Commission should refrain from modifying the program by fiat and without considering the commercial implications of any rule changes. As the Commission has been advised many times in this process, and as the Commission has articulated, regulatory stability and certainty are critical

¹ While the Proposed Decision dismisses the Division's objection to the rule change because the Division did not "identify any specific problem if [the Commission adopts] this clarification," (See Proposed Decision at page 5), Sempra Global describes herein several problems with the proposed rule changes. In addition, Sempra Global submits that the Commission should only adopt changes to its regulatory programs upon a record that the changes are themselves justified and resolve some legitimate, demonstrated problem. The argument that no party "identifies problems with the changes" turns concepts related to burdens of proof and regulatory stability on their heads. The Proposed Decision itself observes these concepts in rejecting several other proposed rule changes, holding that the parties requesting those changes did not demonstrate the need to modify the resource-adequacy requirements and rules. See, e.g., the discussion of the proposal related to the treatment of intermittent resources at pages 6 and 7.

elements of the programs being adopted to assure the reliability of the California grid. Reversing itself on key components of the resource-adequacy program fails the principle of regulatory stability and should only be done with due care and with full knowledge of the effects of serial modifications on commercial transactions, both current and future. Third, the Commission can fully address the issues presented by the CAISO without requiring that import contracts be modified to specify delivery points at a CAISO intertie. The CAISO's concern could be addressed by simply requiring that the suppliers providing resource-adequacy capacity under import contracts certify that the resources upon which they are relying are external to the CAISO control area. Tying suppliers and their counterparties to specific inter-tie delivery points is unnecessary, and reduces the value of these contracts to both parties to the transaction by impairing the flexibility otherwise implicit in their agreement.

Finally, the Commission previously stated (D.05-10-042, at p. 67) that it would not require load-serving entities to procure firm transmission rights as a prerequisite to qualifying import contracts as resource-adequacy capacity. By requiring that a load-serving entity identify a point of delivery for each of its import contracts, the Commission effectively reverses itself, placing load-serving entities under the burden of modifying their previously executed commercial transactions and subjecting them to the additional costs associated with obtaining firm transmission rights to the specified point of delivery. This wholly undermines the economic analyses used by load-serving entities to develop their capacity portfolios and, at a minimum, should not be applied to any resource-adequacy demonstrations submitted prior to the 2008 year-ahead showing. By that time, the CAISO will have implemented its Market Redesign and Technology

Upgrade (“MRTU”) program, and load-serving entities will have time to develop their 2008 portfolios consistent with both the new Commission rules on imports and in consideration of the effects that MRTU will have on the relative competitiveness of imported energy and, more importantly, on the value of congestion revenue rights at various delivery points on the CAISO system.

For the foregoing reasons, the Commission should reject the Proposed Decision with respect to the modifications adopted for import contracts.

II. Summary and Prayer for Relief

Wherefore, Sempra Global respectfully requests that the Commission:

- Reject the modifications with respect to specified delivery points for Firm LD imports, as proposed by the CAISO;
- Adopt the less drastic alternative of requiring that suppliers to import contracts certify that their obligations to provide resource-adequacy capacity will not be met using resources internal to the CAISO control area; and
- Defer any modifications until after the implementation of MRTU.

Respectfully submitted,

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December 4, 2006

CERTIFICATE OF SERVICE

I hereby certify that a copy of **COMMENTS OF SEMPRA GLOBAL ON PROPOSED OPINION ON PETITIONS FOR MODIFICATION OF DECISION 05-10-042** has been electronically mailed to each party of record on the service list in R.04-04-003. Any party on the service list who has not provided an electronic mail address was served by placing copies in properly addressed and sealed envelopes and depositing such envelopes in the United States Mail with first-class postage prepaid.

Copies were also sent via Federal Express to the Commissioner Michael R. Peevey and Assigned Administrative Law Judges Carol A. Brown and Mark S. Wetzell.

Executed this 4th day of December, 2006 at San Diego, California.

/s/ Jodi Ostrander

Jodi Ostrander

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